*** NOT FOR PUBLICATION ***

NO. 23673

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

PATRICK HERMAN KAIPO ASING, Plaintiff-Appellee

vs.

NALAYNE MAHEALANI ASING, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 98-1761)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-appellant Nalayne Mahealani Asing (Wife) appeals from the (1) April 17, 2000 order granting summary judgment regarding real property located at 2004-D Kalawahine Place in Honolulu, Hawaiʻi [hereinafter, "the Kalawahine property"], (2) July 19, 2000 order summarily denying her motion for reconsideration of the order granting summary judgment, and (3) July 20, 2000 divorce decree of the family court of the first circuit, the Honorable Allene Suemori presiding, concluding that the Board of Land and Natural Resources's (BLNR) June 28, 1991 determination that Patrick Herman Kaipo Asing (Husband) was eligible for a lease of the Kalawahine property was binding and awarding Husband all rights, title, and interest in the Kalawahine property. On appeal, Wife argues that the family court erred in awarding Husband the Kalawahine property, inasmuch as

> (1) the court should have deferred to the role of the Hawaiian Homes Commission [(HHC)] under the doctrine of

> primary jurisdiction[,] (2) the court improperly relied on a 1991 action of the [BLNR] where the [BLNR] acted beyond its jurisdiction and intruded upon the authority of the [HHC,] (3) Wife, not Husband, is eligible to obtain a lease under § 6 of Act 150[,] (4) the court improperly accorded res judicata effect to the [BLNR's] 1991 action even though Wife had no "adequate incentive to litigate" the award of a lease to [Husband], [] and (5) the court mis-characterized the [BLNR's] 1991 decision when it claimed the [BLNR] had determined Wife was not eligible to receive a lease under Act 150.[1]

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) the family court did not err in concluding that the BLNR's June 28, 1991 decision was binding, inasmuch as (a) Act 150 expressly granted the DLNR the exclusive authority to determine lease eligibility, (b) Wife's written request to DLNR for a DHHL lease of the Kalawahine

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[1] Wife specifically challenges the following conclusions of law (COL):

> 1. The [Department of Land and Natural Resources's (DLNR's)] determination of Husband's eligibility for a lease of the Kalawahine property is binding on this [c]ourt.
> 2. Because [Husband's] claim to the Kalawahine property is ancestral in nature, the [c]ourt finds that he has had a pre-marital equitable entitlement to the Kalawahine property. Therefore, the [c]ourt hereby categorizes [Husband's] interest in the prospective lease of the Kalawahine property as a Category 1 premarital interest.
> 3. The [c]ourt awards all of such Category 1 interest to [Husband].
> 4. The [c]ourt further finds that there has been no evidence presented of any discernable or identifiable Category 2 appreciation since date of marriage in the [Kalawahine] property. Therefore, the [c]ourt accordingly makes no award of any Category 2 interest to [Wife].
> 5. The [c]ourt further fully adopts and ratifies the determination of [DLNR] that the sole eligible lessee of the subject property is [Husband].
> 6. Based upon the foregoing, the [c]ourt awards all right, title, and interest of any nature in the Kalawahine property to [Husband].

property on behalf of herself and Husband satisfied section 6 of Act 150, and (c) Wife never elected to timely challenge the BLNR's 1991 and 1999 decisions, see 1990 Haw. Sess. Laws Act 150; Citizens v. County of Hawai'i, 91 Hawai'i 94, 979 P.2d 1120 (1999); State v. Magoon, 75 Haw. 164, 858 P.2d 712 (1993); (2) the primary jurisdiction doctrine does not apply, inasmuch as the BLNR and HHC already conclusively resolved and finally determined that Husband solely qualified for a lease of the Kalawahine property under Act 150, see Aged Hawaiians v. Hawaiian Homes Comm'n, 78 Hawai'i 192, 891 P.2d 279 (1995); Chun v. Employees' Ret. Sys. of the State of Hawaii, 73 Haw. 9, 828 P.2d 260 (1992); Hawaii Blind Vendors Ass'n v. Department of Human Servs., 71 Haw. 367, 791 P.2d 1261 (1990); and (3) the family court did not exceed its authority under HRS § 580-47 when it awarded all rights, title, and interest in the Kalawahine property to Husband, inasmuch as (a) the Kalawahine property was part of Husband's and Wife's estate subject to division and distribution under HRS § 580-47, (b) Husband's right to the Kalawahine property was ancestral in nature and preceded his marriage to Wife, and (c) Husband's interest in the lease of the Kalawahine property constituted a category 1 premarital interest, see HRS § 580-47; Tougas v. Tougas, 76 Hawai'i 19, 868 P.2d 437 (1994). Accordingly, based on the state of the record before the family court at the time it issued its orders and divorce decree, it

cannot be said that the family court abused its discretion in awarding Husband all rights, title, and interest in the Kalawahine property. Therefore,

IT IS HEREBY ORDERED that the family court's (1) April 17, 2000 order granting summary judgment, (2) July 19, 2000 order summarily denying Wife's motion for reconsideration, and (3) July 20, 2000 divorce decree, from which the appeal is taken, are affirmed.

DATED: Honolulu, Hawai'i, November 22, 2004.

On the briefs:

Alan T. Murakami, Carl C. Christensen, and Moses K.N. Haia III of the Native Hawaiian Legal Corporation for the defendant-appellant Nalayne Mahealani Asing

Paul A. Tomar and Daniel J. Kunkel of Ashford & Wriston for the plaintiff-appellee Patrick Herman Kaipo Asing